

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ELOISA MARQUEZ, RICHARD MARTINEZ,
DESTINEY MARTINEZ and ANDRELLITA MARTINEZ,

Plaintiffs,

Case No.: 1:15 CV 00787 KBM-LF

vs.

OFFICER NICHOLAS LEVINE, in his official capacity as
a commissioned law enforcement officer and individual capacity,
OFFICER RYAN KUEHL, in his official capacity as a
commissioned law enforcement officer and individual capacity,
and the NEW MEXICO STATE POLICE DEPARTMENT,

Defendants.

PLAINTIFFS' MOTION TO COMPEL

COME NOW Plaintiffs, by and through their counsel of record, Pilar Tirado Murray, and pursuant to LR 26.6 and D.N.M. LR-Civ. 37.1(a) and (b) respectfully move the Court for a Order to Compel Defendants' responses to Plaintiffs' discovery requests and for sanctions as appropriate. In support, Plaintiffs state as follows:

1. On Thursday December 17, 2015, Plaintiffs received Defendants' response to Plaintiffs' First Set of Requests for Admission, Requests for Production and Interrogatories to Defendants Nicholas Levine, Ryan Kuehl and the New Mexico State Police. It was 208 pages.
2. Upon careful review of Defendants' voluminous writings, Plaintiffs realized no documents were produced. Defendants' answers to Plaintiffs questions and requests amounted to multi-page objections

inviting the Court to shift the burden of discovery onto Plaintiffs under a misreading¹ of the new rule of proportionality. Over three-fourths of Defendants' answers were incomplete or incorrect.²

3. Plaintiffs sent three detailed letters to counsel Frank T. Apodaca at 8:30 a.m. on Monday, January 4, 2015, explicitly identifying the missing information and asking Mr. Apodaca to supplement his clients' responses to Plaintiffs' discovery requests in good faith. (Good faith letters, attached).
4. The following day, January 5, 2016, Plaintiffs prepared and filed a Motion to Extend Time and a re-titled/amended Motion to Extend the Discovery Deadline under LR 26.5(a). The purpose of these motions was to allow Mr. Apodaca a meaningful opportunity to supplement his responses to Plaintiffs' discovery requests. [Doc 61 filed January 5, 2015] [Doc 62 filed January 5, 2015]. The undersigned attorney certifies that she conferred with Mr. Apodaca on this subject in an attempt to determine if or when he would supplement his responses and that conversation was not fruitful.

¹ The Advisory Committee states that the new Rule 26(b)(1) is not intended to place the burden of proving proportionality on the party seeking discovery (See, April 10-11, 2014 Report of the Advisory Civil Rules at 84.)

² Defendants' objections referred Plaintiffs to their Initial Rule 26 Disclosures and reiterated their prior arguments about Defendants' right to privacy. These arguments were reflected in Defendants' Motion for a Protective Order and embody their unilaterally narrow construction/denial of Plaintiffs' theory of the case.

5. The Court has not ruled on Plaintiffs' LR 26.5(a) motion.
6. This motion is filed to preserve Plaintiffs' rights under the rule.
Defendants' discovery responses and Plaintiffs' objections have been
filed [Docs 70 – 74 January 6, 2015] and are incorporated by reference
herein.

RESPECTFULLY SUBMITTED,

/s/ Pilar Tirado Murray
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I certify that a copy of the
foregoing was served on
opposing counsel via CM/ECF
and via U.S. Mail first class
on this 6th day of January, 2016.

/s/ Pilar Tirado Murray